GOVERNMENT OF MYSORE.

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR)

Labour Dispute :—Industrial Dispute between the Workmen and the Management of Ganga Talkies, Malavalli, Mandya District.

Award of the Labour Court, Bangalore—Published.

Read the following papers :

(i) Letter No. 978/67–68, dated 30th November 1967 from Shri P. T. Kadkol Presiding Officer, Labour Court, Bangalore,

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 30th day of November 1967.

Present :

Shri P. T. Kadkol, B. Sc., LL. B., *Presiding Officer.*

Reference No. 118 of 1966.

Workmen represented by the Secretary, Mysore Division General Labour Union, Clock Tower Square, Mysore. ... *I Party.*

Vs.

The Management, Ganga Talkies, Malavalli, Mandya District ... *II Party.*

Reference.

G. O. No. LMA 434 LLD 66, dated 19th September 1966.

AWARD

The Government of Mysore being of opinion that an industrial dispute exists between the workmen and the management of M/s. Ganga Talkies, Malavalli, have referred it to this court for adjudication under Section 10 (1) (c) of the Industrial Disputes Act, 1947, by their Order No. LMA 434 LLD 66, dated 19th September 1966, setting out the following points of dispute for adjudication :—

> "Is Shri P. Rama Rao, Chief Operator of Ganga Talkies, Malavalli, Mandya District, entitled for reinstatement with back wages and continuity of service ? If not, to what other relief he is entitled to?"

2. The cause of the aggrieved workman P. Rama Rao, has been sponsored by the Mysore Division Labour Union, Mysore. This Union, as representing the workmen, is the First Party. The Management of Ganga Talkies, Malavalli, is the Second Party. Mr. Sastry has appeared for the Union and Advocate Mr. B. Subba Rao has appeared for the Management.

3. The Second Party is an Establishment, exhibiting cinema pictures, at Malavalli, under the name "Ganga Talkies". The proprietor of the Establishment is Mr. M. C. Gejjappa. Mr. Gundu Rao is the Manager thereof. The theatre is running from before the year 1959.

4. Gejjappa appointed Rama Rao as the Chief Operator in the Theatre on 7th June 1959, on a salary of Rs. 100 per month, and issued to him the appointment order marked Ex. W, 1.

5. A civil litigation was going on in the family of Gejjappa. In 1962, the matter was pending decision in the High Court of Mysore in R. A. No. 128 of 1959. As per the order passed by the High Court, a receiver of the properties was appointed. This Receiver took possession of the Ganga Talkies establishment also on 26th October 1962. By a later order of the High Court, the Receiver put back Gejjappa in possession of the Theatre on 5th October 1965. (These are the averments made by the Management, in its statement of objections). Gejjappa was managing the Theatre from before 7th June 1959 to 26th October 1962; the Court Reciver was managing it from 26th October 1962 to 5th October 1965; and from 5th October 1965 till date Gejjappa is again managing the Ganga Talkies Theatre. Rama Rao has continued in the Theatre as the Chief Operator all the time.

6. The case of the First Party Union, as set out in the statement of claims is that the Management has illegally terminated the services of Rama Rao with effect from 3rd March 1966; this termination is unwarranted and unjustified; hence the order of termination be set aside and the Management be directed to reinstate Rama Rao in his former post, with all back wages and continuity of service, etc.

7. The Management of the Second Party has submitted its statement of objections, dated 18th April 1967, through Gejjappa. Gejjappa, after admitting that he had appointed Rama Rao as the Chief Operator on 7th June 1959, has contended :—

Rama Rao ceased to be his employee during the time the Court Receiver was in possession of the Theatre. He (Rama Rao)

was a temporary employee under the Receiver. After he (Gejjappa) took possession of the Theatre from the Court Receiver, he asked all the employees in the Theatre to submit fresh applications for their re-employment in their respective posts. All employees gave such applications and they were duly re-employed in their former posts. But Rama Rao did not give any fresh application for his re-employment as Chief Operator. Inspite of it he (Gejjappa) continued Rama Rao as an operator as a casual worker on daily wages, the wages being Rs 4 per day. Thereafter Rama Rao abandoned his job voluntarily and of his own accord. Rama Rao is not a "workman" as defined in the Industrial Disputes Act and the First Party Union also has no right to represent him. Rama Rao is not entitled to any reliefs and hence the reference be rejected.

8. The issues arising for decision are :—

1. Is Rama Rao a workman as defined in Section 2 (s) of the Industrial Disputes Act ?
2. Is the First Party Union entitled to represent him ?
3. Does the First Party prove that the Management of the Second Party has terminated the services of Rama Rao, otherwise than in accordance with law.
4. To what reliefs, if any, is Rama Rao entitled ?

9. The Second Party was permitted to engage an Advocate. It had engaged Advocate Mr. B Subba Rao. The case was fixed for evidence on 6th June 1967. It was adjourned to 14th June 1967, at the request of Mr. Subba Rao. On that day Mr. Subba Rao again sent an application seeking an adjournment and it was granted. Then it was fixed for evidence in Mysore Camp on 10th July 1967. The notice sent to the Second Party was returned unserved, with an endorsement of the postal authorities that the Establishment was closed. The case was adjourned and fixed on 12th September 1967 for hearing in Mysore Camp. On that day too, it was adjourned on an application sent by the second party, awarding Rs. 15/-as costs of adjournment to the First Party. Thereafter the case was fixed for evidence in Mysore Camp again on 7th November 1967. Notices were issued to (1) the First Party (2) the Management of the Second Party and (3) Advocate Mr. Subba Rao. The notice sent to the Management of the Second Party was returned unserved, with an endorsement by the postal authorities that the addressee refused to accept it. The Notice sent to Mr. Subba Rao, Advocate and the First Party, were duly served.

10. When the case was called on for hearing at Mysore on 7th November 1967, only the first party was present. Neither the Management of the Second Party nor its advocate was present Hence, the court was obliged to hear the case in the absence of the Second Party. The First Party has examined Rama Rao as W. W. 1 and produced three documents marked Exts. W. 1 to W. 3.

11. Admittedly Rama Rao was working as a Chief Operator in the Theatre on a monthly salary of Rs. 125 or daily wages of Rs. 4 The work that he was doing was skilled manual work. Even if he was working temporarily as alleged by the Management, he would be a workman as defined 2 (s) of the Industrial Disputes Act. Hence, I record my finding on the first issue in the affirmative.

12. The services of Rama Rao have come to an end on 3rd March 1966. Section 2-A of the Industrial Disputes Act has come into force on 1st December 1965. Hence the dispute referred for adjudication shall have to be deemed to be an industrial dispute. It would, therefore, follow that the First Party Union can represent the cause of Rama Rao. Hence I record my finding of the second issue in the affirmative.

13. Rama Rao was appointed as the Chief Operator on 7th June 1959, under the letter of appointment as Ex. W. 1. He has continued in that post in the Establishment, till 3rd March 1966. It may be that the Court Receiver was in the possession and Management of the Establishment from 26th October 1962 to 5th October 1965. In law, the possession and Management of the Establishment by a Court Receiver is always deemed to be the possession and Management of the true owner. Gejjeppa was in possession and Management of the Establishment before 26th October 1962 and the possession and Management have been restored to him on 5th October 1965, by the order of the Court. Hence, in law, Gejjeppa himself would be deemed to be in possession and Management of the Establishment from 26th October 1962 and 5th October 1965 also. It follows, therefore, that there has been no change either in the possession or ownership or Management of the Establishment, at any time. Rama Rao shall, therefore, have to be deemed to be in continuous service in the Establishment from 7th June 1959 down to 3rd March 1966. the Management of the Establishment, could not, therefore, demand a fresh application from him (Rama Rao) for re-employment nor

could it change his (Rama Rao's) service conditions on or after 5th October 1965, except in accordance with law.

14. Now the question would be whether Rama Rao's services have been terminated by the Management or he left his service of his own accord. Rama Rao has sworn that on 3rd March 1966, when he went for his duty as usual, Gejjeppa and Gundu Rao asked him not to enter the cabin and do his work. When asked why, they told him that there was no need for them to disclose the the reason. Thereafter, Rama Rao moved the conciliation authorities, through the Union. A copy of the conciliation proceedings is produced at Ex.W. 2. During the conciliation proceedings, the representative of the Management (as summarised in Ex. W. 2) has stated that after receiving possession of the Establishment from the Court Receiver, it asked all the employees to give fresh applications for re-employment, and all the employees, except Rama Rao gave them and they were re-employed. As regards Rama Rao, the representative of the Management has stated that Rama Rao was taken as a daily rated employee at the rate of Rs. 4 as wages per day and on 16th March 1966, the Management removed him from service, without issuing him any notice and without calling for his reasons for his unauthorised absence from 14th March 1966. In Ex. W. 3, which is a letter written by the Management to the Union on 22nd April 1966 (in reply to the Union's letter dated 19th April 1966) it has said that Rama Rao had himself stayed away from work. In the statement of objections also, Gejjappa has said that Rama Rao abruptly left his services. But the Management has not led any evidence in support of this contention. The stand taken by the Management duringthe conciliation proceedings is, that Rama Rao remained absent from work from 14th March 1966, and so it terminated his (Rama Rao's) services, on 16th March 1966. This stand fully supports the statement of Rama Rao, though the dates differ and Rama Rao has denied his alleged absence. Considering all these facts and circumstances, I hold that the Management has dismissed Rama Rao or terminated his services, otherwise than in accordance with law and record my finding on the third issue in the affirmative.

15. Rama Rao has engaged himself in another theatre at Gundlupet since June 1967, as stated by him. On this account, he has stated that he does not want to go back in the service of the Second Party. He has stated that arrears of back wages and service compensation only may be awarded to him and that he does not want anything else. Service compensation cannot be granted to him since he has not been retrenched and since he has

not alleged or proved the existence of a gratuity scheme in the second party establishment. But I see no objection to allow him back wages from March 1966 to the end of May 1967. The period will be fifteen months. The amount due to him as wages at the rate of Rs. 125 per month would come to Rs. 1,875. Hence I award him this amount and add to it Rs. 15 awarded to him as costs for the adjournment taken by the Second Party on 12th September 1967. The total amount would be Rs. 1,890.

16. In the result, I make the Award as below :--

AWARD

Reference is accepted. The Management of the Second Party is directed to pay a sum of Rs 1,890 to the aggrieved workman Rama Rao, within one month of the publication of this Award in the Mysore Government Gazette.

P. T. Kadkol,
Presiding Officer,
Labour Court, Bangalore.

"COPY"

P. T. Kadkol,
Presiding Officer,
Labour Court, Bangalore.

ORDER.

Bangalore, dated 8th December 1967.

S. O. 2386.—WHEREAS by State Government Order No. LMA 434 LCI 66, dated 19th September 1966, the Industrial Dispute between the Workmen and the Management of Ganga Talkies, Melavalli Mandya District, was referred to the Labour Court, Bangalore for adjudication ;

AND WHEREAS the Labour Court, has submitted to the State Government its award in respect of the said Industrial Dispute

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. LMA 431 LCI 66.]

By Order and in the name of the Governor of Mysore,
G. G. PUROHIT, *Under Secy.*